IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2524 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI ISWARBHAI PUNJAB

Versus

1.THAKORE VIRSANGJI GODADJI AND ANOTHER

Appearance:

MR NAGIN N GANDHI for Petitioner

MR VD PARGHI for Respondent No. 1

MR ST MEHTA, Ld. APP for Respondent No. 2

MR MH BAREJIA for Respondent No. 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. This Criminal Misc. Application is filed under sec.482 of the Code of Criminal Procedure, 1973 (In

short `Cr.P.C.') filed by original accused with a prayer to quash the proceedings initiated by the complainant Thakore Virsangji Godadji on the basis of his complaint Police Inquiry No.29/1994 has been registered in the Court of the learned Chief Judicial Magistrate, Mehsana.

2. The petitioner is accused while respondent no.1 is the original complainant and respondent No.2 is the State of Gujarat i.e. Prosecution. During the pendency of this application, at the request of the petitioner, one Narayan Savalani of Surat has been impleaded as respondent no.3, who is represented by Mr.M.H.Barejia and, therefore, the parties will be referred to hereinafter as the complainant, accused and the prosecution respectively at the appropriate places.

3. The facts leading to this Criminal Misc. Application in a nutshell are as follows:

3.1 On or about 24.2.94, complainant Thakore Virsangji Godadji lodged a private complaint against the accused i.e. present petitioner for offences punishable under secs.504, 506(2) and 406 read with sec.420 of IPC in the Court of the Chief Judicial Magistrate, Mehsana. As per the complaint, it is the case of complainant that, complainant is carrying on business of selling sarees in retail by moving from village to village. Accused Manubhai Iswarbhai Punjab is carrying on business of sarees at Surat. It is the case of the complainant that he is purchasing sarees from accused by making payment of money in advance and by placing orders with accused and thus he has got a business relation with accused and therefore he knows accused very well. It is the case of the complainant that long before 24.2.94, he had remitted Rs.5,000/- to accused and placed the order for supply of goods. Thereafter accused was frequently informing the complainant that he(complainant) should trust on him and he(accused) would supply the goods and therefore the complainant was waiting for receiving of goods from the accused.

3.2 On or about 23.2.94 at about 7.00 p.m. accused came personally to house of complainant at Mehsana. At that time accused had not brought the goods with him for which complainant had placed the order. At that time complainant inquired from accused for the goods for which order was placed. Thereupon accused informed the complainant that complainant has never paid any money in advance to him. Thereupon, complainant asked the accused as to why he was telling lie because he had paid money hand to hand in presence of one Trikambhai Narayanbhai

Patel of Mehsana and as to why complainant was turning out from the promise. It is further the case of the prosecution that accused was enraged and by speaking filthy language he abused the complainant and threatened him that he(accused) would kill him to complainant if complainant would talk with him regarding advance money or supply of goods of sarees. At that time one Zakirbhai Nagori of Kasba was passing by, from that place. He intervened and separated complainant and accused from the quarrel. Thus it is the case of the prosecution that accused has committed offences punishable under sec.504, 506(2) read with sec.406, 420 of IPC.

3.3 Below that complaint, the learned Chief Judicial Magistrate, Mehsana, passed an order dated 24.2.1994 directing Police Inspector, City Police Station, for inquiry under sec.156(2) of Cr.P.C., with a further direction to submit his report within one month.

3.4 Being aggrieved against and dissatisfied with the said order dated 24.2.1994 below the complaint, the petitioner-accused has filed this application with a prayer to quash the proceedings initiated against him.

4. I have heard Mr.N.N.Gandhi, learned advocate for the petitioner and Mr.S.T.Mehta, learned APP for respondent No.2. Mr.V.D.Parghi, learned advocate for the respondent No.1 and Mr.M.H.Barejia, learned advocate for the respondent No.3 remained absent when called out.

5. Shri N.N.Gandhi, learned advocate for the petitioner has argued that he has made certain allegations against Narayan Savalani, who is respondent no.3 in the memo of this application. He has argued that accused is not knowing the complainant and that accused had never carried on any business of sarees. For respondent no.3, he has argued that accused has some monetary dispute with respondent no.3. In order to extract money from the accused which the accused is not liable to pay, the respondent no.3 had arranged to file false and frivolous complaint by and in name of Thakore Virsangji Godadji. He has argued that though respondent no.3 is represented by learned advocate Mr.Barejia, he has not filed any affidavit-in-reply and, therefore, what complainant says in the memo of this present matter may be taken to be true and correct. Merely, because respondent no.3 who is impleaded at the instance of the petitioner has not filed affidavit-in-reply, no inference can be drawn that complaint is false, frivolous and vexatious. If one person says in affidavit that he is President of India and if opposite party does not file

any affidavit-in-reply, the facts stated by that person in his affidavit cannot be said to have been proved and he cannot claim that he is the President of India. Thus arguments of Shri Gandhi for non-filing of affidavit-in-reply by respondent No.3 is devoid of merits and therefore that arguments are rejected.

5.1 Another ground taken by Mr.N.N.Gandhi is to the effect that in para 3 of the complaint, complainant has stated that he had remitted Rs.5000/- to accused some long period, before the date of complaint and in para 4 of complaint, he has stated that he paid money to accused hand to hand in presence of Trikambhai Narayanbhai Patel of Mehsana and therefore this complaint is false and frivolous. Merely because there are some contradictions in stating the fact, it cannot be said that complaint is false.

6. Mr.S.T.Mehta, learned APP for the State has argued that all the ingredients necessary to constitute the offences are made out by the complainant in his complaint. What is necessary is to read para 5 of the complaint lodged by the complainant. All the ingredients are constituted on the basis of what is stated in para 5 of the complaint. He has requested this Court to refer paras 3 and 4 of the complaint. He has further argued that complainant has cited two witnesses, one Trikambhai Narayanbhai Patel and other one Zakirbhai Nagori and therefore from complaint it clearly appears that incident took place and it cannot be said that the complainant has come with an imaginary story.

7. The facts stated in complaint are required to be investigated. The learned Chief Judicial Magistrate has sent the complaint to Police for investigation under sec.156(3) of Cr.P.C., and therefore, the matter is under inquiry. The Court has not yet taken any cognizance and therefore the question does not arise for quashing the proceedings and when the matter is at the stage of inquiry, it would be very risky to quash the proceedings without giving any opportunity to the complainant for leading his evidence in support of his complaint.

8. In the facts and circumstances of the case and in view of what is stated hereinabove, this Court finds that this application is devoid of merits and it requires to be dismissed and therefore accordingly this present Criminal Misc. Application is dismissed. Rule is discharged. Interim relief granted on 30.5.94 by this Court is vacated.

The learned Chief Judicial Magistrate, Mehsana, is directed to ask that Police Inspector of City Police Station, to whom an inquiry bearing Police Inquiry No.29/94, is entrusted under sec.156(3) of Cr.P.C. to file his final report within one month from date of receipt of this order, and on receipt of final report, he may take a judicial decision on that report, in accordance with law.

(H.H. Mehta, J.)

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